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RELIGIOUS ENDOWMENTS BILL OF 1926.

FROM the publication of the Religious Endowments Bill of 1926 it is clear that the Government of India is giving sanction for the re-enactment of the Religious Endowments Bill and the ministry of this province intends introducing at the next session of the Legislative Council a re-enacting Bill. We also gather from the newspapers that the Government of India is opposed to a validating bill though not to a re-enacting bill.

The Government of India evidently seems to have taken, if one may say so rightly, the view that a validating enactment as such can be passed only by the Imperial Parliament, that the local Legislative Council, as now constituted, cannot validate a statute, purporting to have been passed by the local Council, whereas a re-enacting bill is in the nature of an introduction of a new measure into the new Council, and, therefore, is within the ambit of the powers of the local Legislative Council. The distinction between a re-enacting and a validating bill is, in the circumstance of this particular case, one of form rather than of substance. For, the re-enacting bill contains a provision validating all the Acts of the Endowment Board, and the whole machinery constituted under the prior Act. If the provision so inserted into the new bill is not to be termed a validating provision, it can only be viewed as a provision giving a retrospective effect of a novel character to a bill which is to be introduced afresh and for the first time. Thus it will be seen that the objections of the Government of India to a validating bill as such are equally applicable to a re-enacting bill with a validating provision.

On the eve of the proceedings connected with the remittal of a bill to the second Council, that is, the present Council, writing in the columns of this Journal* against the legality and

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the constitutionality of the procedure then adopted the undersigned expressed himself in these terms: "To say the least, the question is not free from doubt and is one of grave constitutional importance, and we have no doubt that His Excellency the Governor, the Chief Minister concerned and the Law Officers of the Crown and the members of the local Legislative Council will give due consideration to the points involved, especially as any irregularity consequent on the non-compliance with the terms of S. 81-A is not likely to be cured by S. 84 of the Act, which validates only certain specific classes of illegalities or irregularities."

Apart from the technical and legal aspect of the question, the constitutional issue underlying the remittal of a bill to a Council other than the Council that passed it was also pointed out in these terms in the columns of this Jounrnal*:"It has been never so much as suggested that the Governor in the exercise of this power could send back a bill to a new Council: in fact, such a thing could not be conceived of in countries where full responsible and party Government obtains. The object of a constitutional statute or the convention of a constitution providing for the cessation of the life of a representative assembly is that the new assembly might reflect the spirit of the nation as a whole for the time being. The duty of a new Assembly is not and cannot be merely to register or reconsider the decrees or decisions or deliberations of a former Council." The Government of this province practically scoffed at and flouted the legal objections then urged to the procedure adopted by His Excellency the Governor, and the ministry followed the extraordinary procedure of debating on the floor of the House the constitutionality and the legality of the procedure adopted, a question depending upon the interpretation of the Government of India Act and the constitutional conventions obtaining in countries governed by representative institutions. The services of their Law Officer, the Advocate-General and the Law Member were utilised for the purpose of arguing the case for the Government before the Council. The Government evidently took the view that the question of legality is to be and could be determined by a vote of the House or the party in power. In spite of protests by the public and a large section of lawyers, His Excellency the Viceroy and the Secretary of State gave their sanction to the Act as passed by the second Council. Since then, the mat-

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ter has been taken to the highest Court in the land by persons interested in various religious endowments and the question as to the legality of the enactment is pending decision. It is somewhat strange that the ministry, quite sure of its position on the former occasion, should suddenly grow nervous of it, rush up to Simla to get sanction, for a validating or re-enacting bill.

The attitude of the ministry betrays a want of confidence in the highest Court in the land. The objections to an interference with the ordinary procedure in a pending litigation are forcibly pointed out in the columns of the *Hindu* of the 4th August and I do not propose to repeat them. A re-enacting measure, under the present circumstances, is open to serious objections. The Council in re-enacting a measure would have to take upon itself the responsibility of considering the merits of each one of the provisions of the Bill, clause after clause. The party in power did not fight out the elections on the issue of a proposed introduction into the new Council of a legislation regarding Religious Endowments.

The term of the Council is about to expire and the measure proposed is a serious and important one affecting the religious life of the people and a large class of His Majesty's subjects. It is only fair that the verdict of the electorate should be taken at the coming elections on such an important measure and there is no reason disclosed for deviating from the accepted constitutional principle that as far as possible the Legislature should reflect the spirit and temper for the time being of the nation or the electorate. There is no point in any possible argument that may be urged that the measure like the one in contemplation with a view to cure a possible legal defect (if this is the correct view of the measure) should be introduced as soon as possible; for an interval of two or three months is not going to make a great difference.

The Government waited for three years and could well afford to wait a few months longer.

Besides the general considerations above adverted to, I should like to place before my countrymen certain serious defects in the enactment as it stands and as it is proposed to be introduced, which requires thoughtful and conscientious consideration. The defects pointed out will, I trust, demonstrate that it is not a measure to be hurried through, that it is not a measure in regard to the passing of which the various rules as to reading, discussion, etc., of the Bill should be suspended, as

they must inevitably be, if it is to be rushed through at the next session.

In dealing with the defects of the Bill, I do not propose to address myself to any general points of controversy such as the advisability of bringing mutts and religious ascetics and Acharyas under the jurisdiction of lay committees of heterogeneous composition, the extent and limit within which a provincial legislature representing distinct religious persuasions ought to interfere with institutions belonging to a particular sect or community or the necessity of an enactment with a complex machinery for working the provisions of the enactment. I shall confine myself to such defects as appear on the face of the Bill itself.

1. *Application of Endowment Funds* :—One of the chief objections to the Bill is clause 67 of the present re-enactment Bill, which practically abrogates the well-accepted principle of Cypres application of endowment surplus funds though there is a misleading marginal note to the clause indicating that the clause is intended to enact in a statutory form the Cypres doctrine well recognised in English Courts of Equity. The clause as it runs enables the Board to direct the appropriation of temple funds to religious, educational or charitable purposes not inconsistent with the objects of a mutt or a temple. "The doctrine of Cypres with regard to charitable trusts as ordinarily understood is that where a general charitable intention is evinced by a founder, settlor or testator and where he has provided for giving effect to that intention in a particular mode or manner which for some reason or other could not be carried out in exact conformity with the plan or purpose of the person who has provided therefor, the law or the Court will substitute another mode Cypres, viz., as near as possible to the intentions of the founder. But the Court will not abrogate to itself the jurisdiction to divert the funds intended for one purpose to a different purpose. At best it may substitute for a particular charity which has been defined and which has failed, another charity which is *ejusdem generis* and which approaches it in its nature and character. The same principle is applied when the income of the fund either originally or in process of time is or becomes greater than what is necessary for the named purposes in the instrument of foundation, if there is one, or for purposes as gathered from usage."*

*This quotation is from the writer's article which appeared in the *Hindu*, dated 25th December, 1922.

The test is not whether the proposed expenditure is inconsistent with the original purpose but whether it can affirmatively be predicated to be allied to the original objects or purposes. Again under the English Law, a sharp distinction is drawn between what are called religious purposes and what are called charitable purposes. It will therefore be seen that the present clause is a negation of the doctrine of Cypres, not an application of it in spite of the misleading marginal note. How is it possible for any Court to say that a particular educational purpose is inconsistent with the purpose of the foundation? There are staunch students of religion who believe that a man must start with the study of positive sciences,become an agnostic and then ultimately develop true religious beliefs and that it is only then that a religious belief will rest on a solid foundation. Are the temple funds to be utilised for education of that character because according to certain people the ultimate tendency of a particular type of education is to lead a man to religious beliefs, and that such an education is not inconsistent with the purpose of the institution? Again, religious beliefs themselves are of varied character. There may be no necessary inconsistency between the Kshanikavadha and the Buddhist, the Advaitic Philosophy of the Vedantin and the Shakti cult of the idolator. But there is at least as much to be said for the view that the Kshanikavada is sure to sap the foundations of temple worship. It is unnecessary to consider in detail the effect of the study of the sciences upon one's attitude towards temple worship. In a determination of this question care has to be taken not to be led away by the utility of a particular type of education. If I were founding a University I would not exclude from the realm of culture the study of any of these subjects. In fact it is impossible to conceive of a true product of culture without a wide outlook and study of different subjects. But it is one thing to found an ideal University and another thing to utilise temple funds for the development of a particular kind of education, whose ultimate tendency may be to sap the very foundations of temple worship. Again in this connection a distinction has to be drawn between the interference by the State with private benefactions and with its own endowments. There may be something to be said in favour of the view that the State can regulate its endowments in any way it pleases, that it will extend its protection thus far and no further. But the same argument does not apply to private benefactions or endowments by private individuals.

It may be open to the State to permit the perpetuation of a charity or not, but the State will not set before itself the policy of frustrating the intentions of the founder. Again there may be something to be said in favour of special legislation in regard to a particular endowment if the surplus is out of all proportion to the purposes of the original foundation. But there is absolutely no justification for a drastic provision enabling the Charity Board or the Court to divert the application of the funds and for the introduction of a novel doctrine of Cypres of the kind referred to in cl. 67 and after all can it be said that the temple purposes have all been exhausted so as to necessitate drastic legislation enabling the utilisation of funds for charitable and educational purposes as distinguished from religious and temple purposes? Is it not possible to make some of our places of pilgrimage model cities with due regard to the welfare, the interests and the modern sanitary requirements of the devotees and pilgrims that visit the shrines? Have any definite schemes been placed before the country which show that the temple funds are more than ample for the ceremonial purposes of the temple and for purposes above referred to? An academic discussion as to the limits of State or legislative interference is not called for. At a particular stage of a country's evolution, the State or Government may say, "We will abolish temples and monasteries"; but then, the statesmen at the helm of affairs must make bold to say so openly avowing that in the proposed legislation he is truly reflecting the spirit of the nation and of the age, and not attempt at covert or indirect legislation.

2. *Powers of the Local Government under the Act.*— In the earlier stages of responsible Government nothing is more important than to give ample scope for the growth of healthy traditions and conventions. It will not be gainsaid that care has to be taken to see that the ordinary routine and regular machinery of Government is not made an engine of oppression by the party in power or is not made the means of perpetuating its power. We know from our actual experience that the Local Government machinery in the rural areas is used for electioneering purposes and for the purpose of stereotyping of what was originally intended to be a flexible, elastic and responsible party Government. If we briefly survey the provisions of the Act, we see that at every stage the Local Government is made the supreme arbiter of the destinies of an endowment. It can abolish Committees without assigning

any reason ; it can nominate its own men ; it can newly constitute a Committee and put its own men on it. The right of election to a Committee is a precarious one under the Act; for at any time the Government can intervene and abolish an elected Committee without assigning reasons. It introduces new heads of disqualification for Committee membership. An ardent religious soul might be convicted for sedition and sentenced for a few months, but yet is ineligible for election or appointment as a member of a Committee, and the Local Government, which in this case means the ministry or the party in power, is invested with the power to relax the disqualification in any particular case. The question is whether it is in the interests of sound Government a party in power, whichever might be the party, should be invested with plenary and arbitrary power of the kind above referred to, in a country seething with factions. I have no doubt that the answer of most reflective minds would be unhesitatingly, " No ". Again, one would expect that it is for the legislature to say whether the Act shall apply to particular endowments or not. I can even conceive of a power being vested in the Local Government to exempt a particular class of endowments after due enquiry. But, the Bill enables the Local Government to exempt a particular or specific endowment from the operation of the Act without assigning any reasons. Is this a privilege that ought to be accorded to the head of a party machinery? I am not putting the case too high in stating that there may be a tendency on the part of a candidate for election to make an electioneering promise that if he is elected or if a particular party is returned to power, he or the party will see to the exemption of particular endowments from the operation of the Act.

3. *Rules as to the election to Committee Membership.*— Clause 26 enacts that a person shall be disqualified for election as a member of a Committee if at the date of the nomination he is a trustee over whom the Committee has jurisdiction. In its actual working, this provision is practically rendered illusory. It is a notorious fact that in most cases hereditary trusteeship is a family right. In a joint Hindu family though technically the dormant right of trusteeship is in the whole family, the manager is the only person that is entitled to exercise the duties of a trustee, and as such he is the real trustee. There is nothing in the Act or in the Bill as it stands which prevents the nomination or appointment of members of the trustee families other than the trustee. As a matter of practice, this

device was resorted to in certain cases to get over the provisions of the section.

4. *Gross percentage.*—In the history of India, it had been the policy of successive Governments, Hindu and Mahomedan, up to the British Rule, to make large endowments for religious objects and it is repugnant to the ideas of Hindus that the State should intervene and claim a first charge on the gross income of the smallest temple even before the necessaries of the temple are provided for. The Bill brings within its net even temples getting an income of Rs. 250 a year, *i. e.*, a sum of nearly Rs. 20 every month. With the existing prices, a sum of Rs. 20 would be hardly sufficient for the maintenance of the Archaka and the ordinary 'paditharam' of the temple. And yet, this unfortunate temple will have to pay 1½ per cent. of its income to the Board and another 1½ per cent to the Committee.

5. *Jurisdiction of the Board to enquire into questions as to whether a particular endowment is one to which the Act applies or not.*—It is an elementary principle of law that when a Court or body is invested with a limited jurisdiction that Court or body ought not to be made the sole judge on the question as to whether the subject-matter is within its jurisdiction or not. And yet, S. 84 of the Bill makes the Board the sole judge subject only to the order of the Board being revised by an application to the Court. It is somewhat strange that while the Act contains elaborate provisions safeguarding the right of suit, by a trustee, or an aggrieved party, on even sundry matters, the only remedy of an aggrieved party under S. 84 which deals with the question of jurisdiction is a remedy by application. If there is any case in which the remedy by suit has to be safeguarded, it is in this case. The provision practically enables the Board to clutch at jurisdiction.

6. *The class of endowments to which the Act or particular provisions of the Act applies.*

(*a*) *Excepted temples.*—Excepted temple is defined in the Act and in the present re-enacting Bill as follows : "A temple, which before 1801 was and since 1863 continued to be under the sole management of a trustee whose nomination did not vest in, nor was exercised by, the Government, nor was subject to the confirmation of the Government or of any public officer." The evidence in a particular case might point to the fact that an ancient temple founded prior to 1842 was continuously under the management of a particular family since or

subsequent to 1801 and there might be no evidence one way or the other with regard to the condition of things, prior to 1801 and yet, in spite of the fact that the evidence extends over a century, the institution would not be an excepted temple within the meaning of this clause. It is impossible to see the principle behind this definition. If the object of the clause is to differentiate between temples which have for a long time been under private management and other temples, the principle is equally applicable to an institution which was continuously under private management without any intervention by Government since 1801 as to institutions which were so under private management prior to that date. Clause (*b*) of the section draws a distinction between temples founded since 1842 and temples founded prior to that date. Why should temples founded since 1842 be in a better position than a temple founded prior to 1842 and was continuously under private management without intervention by Government?

(*b*) *Kattalais and endowments for purposes of any service or charity connected therewith*:—The definition of religious endowment under the Act is comprehensive and takes in endowments for the performance of any service or charity connected therewith. It is a notorious fact that there are several institutions like choultries and Veda Pàtasalas founded by Nattukottai Chetties all over the country. In one sense, they are for the performance of charities connected with the temple, founded as adjuncts to particular temples and mutts. It is far from being clear whether it is the intention of the framers of the Bill to bring in these charities also under the definition of religious endowments. Again, service grants were prior to this enactment treated by Courts on a footing different from the trust property of the temple. But the Bill assimilates the service grants with the trusts of the temple and brings both under the definition of religious endowments. So far as the southern part of this Presidency is concerned, a large part of the Kattalais and benefactions in public temples is traceable to the munificence and religious devotion of the members of the Nattukottai Chetti community and of other private donors. There have been very few instances of the misapplication of these special trusts, and there is absolutely no justification for bringing these special endowments under the jurisdiction of local committees, manned possibly by people who have not contributed anything substantial either to the temple foundation or any endowment connected therewith.

The provisions are sure to give a set-back to the munificence and philanthropy of a large number of people.

From my intimate acquaintance with many of the leading members of the Nattukottai Chetti community, I can confidently say that they resent such an interference. S. 37 of the Act provides that the trustee of a specific endowment is not merely subject to the general superintendence of the trustee (General Trustee) but that he shall obey all lawful orders issued by the General Trustee. There may be something to be said in favour of the co-ordination of the different functionaries of a temple, but that is no reason why the special trustee should be made a kind of subordinate to the General Trustee simply because the special trustee's family seems to be charitably minded and has made large gifts to the temple. It is unnecessary to deal with the point that when once a temple is brought under a particular jurisdiction by reason of the definition all the special endowments are automatically brought under the same jurisdiction.

There are a few of the glaring defects which strike one on a cursory reading of the provisions of the Bill. It is not right, when there are such important questions to be considered, that the legislature should rush through the Bill at the fag-end of its life, suspending all rules of business of the House and of debate. The elected members of the Legislative Council are the trustees and guardians of the people's rights and are not merely the pledged mandatories of this or that party, and they ought, with one voice, in justice to themselves and the electorate, protest against rushing through a measure in regard to which there has been so much of public controversy and agitation. So far as I could gather, the party in power seems to feel, whether justifiably or otherwise, that they are sure of their position at the coming elections. If so, what is the justification for twitting the electorate and rushing through this measure at this juncture? In any event, I trust and hope that the members of the Council will see that appropriate amendments are introduced into the Bill.

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